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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

* * * * *

11 CARMEN L. McFERRIN, AS } Cause No.: 15-CV-100-SEH
12 PERSONAL REPRESENTATIVE OF }
13 THE ESTATE OF GREGORY B. }
14 McFERRIN and CARMEN L. }
15 McFERRIN, INDIVIDUALLY, }
16 } Plaintiffs,
17 }
18 MUHAMMAD “WALEED” KHAN, }
19 and AARAV TRUCKING, LLC, }
GREWAL TRANS, INC., and SAC }
TRANS, INC., }
20 } Defendants.
* * * * *

**SECOND AMENDED
COMPLAINT AND DEMAND
FOR JURY TRIAL**

21 COME NOW the Plaintiffs and for their complaints, allege as follows:

22 **PARTIES**

23 1. Carmen L. McFerrin is a resident of East Helena, Montana, and is the
24 duly appointed and acting Personal Representative of the Estate of Gregory
25 McFerrin, her late husband, who was injured and later died on March 9, 2015, in
26 Broadwater County.

27 2. Muhammad “Waleed” Khan (Waleed), on March 9, 2015, and at all
28 pertinent times herein, was an agent of AARAV Trucking, LLC, (AARAV) an

agent of Grewal Trans., Inc., (Grewal) and an agent of Sac Trans, Inc., (Sac Trans), was acting in the course and scope of his agency with AARAV, Grewal and Sac Trans, and was operating a semi-tractor hauling a trailer for and on behalf of AARAV, Grewal and Sac Trans, which trailer was identified as S-125. In this regard, Waleed was at all times acting in concert with Asad Khan (Asad), who was also operating another tractor-trailer unit on behalf of AARAV, Grewal, and/or Sac Trans.

3. Waleed was operating and pulling trailer S-125, which trailer was subject to a Trailer Interchange Agreement entered into between Sac Trans and Grewal and subject to the Commercial Vehicle Lease Agreement between Grewal and AARAV. At the same time, Asad was operating another tractor/trailer unit pursuant to the Commercial Vehicle Lease Agreement between Grewal and AARAV and/or the Trailer Interchange Agreement between Sac Trans and Grewal.

4. At all times pertinent herein Grewal, AARAV, Sac Trans, Waleed and/or Asad were acting in a joint venture and are the principles and agents of each other.

5. As part of this joint venture, all the joint venturers agreed to a cell phone policy that prohibited the use of a “hands-free” cell phone while driving and also prohibited the use of a cell phone or other electronic device at any time in the tractor/trailer, except when the tractor-trailer was parked.

6. Venue is proper in the Helena division because Gregory McFerrin's injuries and death occurred in Broadwater County.

COUNT I

7. Plaintiffs restate and reallege all allegations in ¶¶ 1-6 above.

8. On March 9, 2015, Waleed and Asad, two Pakistani Nationals, were driving semi trucks-trailers in tandem from Calgary to Idaho, proceeding south on Highway 12/287 in Broadwater County. They had been traveling in tandem from

1 Sacramento to Calgary, where they unloaded cargo, and then intended to travel in
2 tandem from Calgary back to Sacramento via Idaho Falls, Idaho. Asad had only
3 been a driver of tractor-trailer units for 37 days, was an entry-level driver with
4 very little experience, did not speak or understand English in any understandable
5 way, required the guidance and control of Waleed to carry out his duties and to
6 understand the geographic areas through which he was operating his tractor-
7 trailer, and was at all times being guided, led, and instructed by Waleed. Waleed,
8 who was leading and guiding Asad, was confused as to their location and as to the
9 most expedient and safest route to Idaho Falls, Idaho, and Waleed negligently
10 chose to leave Interstate 15 and travel on the secondary road 12/287. Waleed was
11 driving in tandem in front of Asad and both of them were speaking on their cell
12 phones to each other in direct violation of the above-mentioned policy of the joint
13 venture. In the alternative, Waleed and Asad were speaking to each other on non-
14 “hands free” mobile phones, which activity was expressly banned by the Federal
15 Motor Carrier Safety Administration Regulations. While the two drivers were
16 conferring on their cell phones about their confusion, their location and their work,
17 Waleed and Asad were speeding in excess of 65 mph when the speed limit for
18 trucks at night was 55 mph and were negligent *per se*. Waleed and Asad, being
19 from Pakistan, apparently could not read the speed limit signs on Highway 12/287
20 and were speeding. Waleed then performed an illegal pass of another motor
21 vehicle while speeding and was negligent *per se* and directly thereafter Asad, also
22 speeding, began illegally traveling eastbound in the westbound lane for over 19
23 seconds, covering 1,700 feet and negligently collided head-on with the pickup
24 truck driven by Gregory McFerrin around mile marker 57.5. By conferring on
25 their cell phones in violation of the joint ventures’ cell phone policy and/or in
26 violation of the Federal Motor Carrier Safety Administration Regulations, Waleed
27 so distracted Asad that Asad negligently injured and killed Gregory McFerrin.

28

Waleed's negligence was a cause of the injury and death of Gregory McFerrin.

9. Waleed was not only personally negligent in the operation of his tractor-trailer, which negligence was a cause of the injuries and subsequent death of Gregory McFerrin, but he was also negligent in distracting Asad, which negligence also was a cause of the injuries and subsequent death of Gregory McFerrin.

10. Waleed is also legally responsible for the negligence of Asad because he was acting in concert with Asad and was acting in a joint venture with Asad, AARAV, Grewal and Sac Trans and/or was acting as an agent of AARAV, Grewal and Sac Trans.

11. Waleed was also negligent in allowing Asad to drive in tandem with him when Asad was such an inexperienced driver, was totally unaware of the geographic territory in which he was operating, could not speak the English language fluently, could not read or understand the English language fluently and did not know the speed limit and this negligence on the part of Waleed caused the injury and death to Greg McFerrin.

12. Gregory McFerrin lived an appreciable amount of time before he finally died.

13. Waleed, AARAV, Grewal, and Sac Trans are all legally responsible for the injuries and death of Gregory McFerrin and are all liable for all survivorship damages suffered by the estate of Gregory McFerrin and all wrongful death damages suffered by the heirs, which wrongful death claim is also brought by the Personal Representative of said estate, the extent of which damages will be proven at the time of trial.

COUNT II

14. Plaintiffs restate and reallege all allegations in ¶¶ 1-13 above.

15. AARAV, Grewal, Sac Trans, and Waleed were all negligent in inducing and allowing Asad, an inexperienced tractor-trailer operator who did not

1 know the English language, who did not know the geographical terrain through
2 which he was traveling, and who was allowing himself to be distracted by the
3 direct violation of the “no use of phones while driving” policy, and Federal
4 Regulations are all jointly and severally liable for all survivorship damages
5 suffered by the estate of Gregory McFerrin and all wrongful death damages
6 suffered by the heirs, which wrongful death claim is also being brought by the
7 personal representative of said estate, the extent of which damages will be proven
8 at the time of trial.

9 **COUNT III**

10 16. Plaintiffs restate and reallege all allegations in ¶¶ 1-15 above.

11 17. Waleed and Asad were on a six-month probationary period as of
12 January 19, 2015. AARAV, Grewal and Sac Trans were negligent in monitoring,
13 supervising and training Waleed and Asad during their probationary period. In
14 addition, Waleed was negligent in his monitoring, supervision and training of
15 Asad. All of this negligence on the part of AARAV, Grewal, Sac Trans, and
16 Waleed was a cause of the injury and death of Greg McFerrin.

17 18. AARAV, Grewal, Sac Trans and Waleed are all legally responsible
18 for the injuries and death of Gregory McFerrin and are all liable for all
19 survivorship damages suffered by the estate of Gregory McFerrin and all wrongful
20 death damages suffered by the heirs, the extent of which damages will be proven
21 at the time of trial.

22 **COUNT IV**

23 19. Plaintiffs restate and reallege all allegations in ¶¶ 1-18 above.

24 20. Carmen McFerrin, individually, due to the negligence of Waleed,
25 AARAV, Grewal and Sac Trans, suffered emotional distress with physical
26 manifestations, which comprises “bodily injury” under Montana law.

27 21. Waleed, AARAV, Grewal, and Sac Trans are liable to Carmen

McFerrin, individually, for all such damages, the extent of which will be proven at the time of trial.

WHEREFOR, Plaintiffs pray for judgment against Defendants as follows:

COUNTS I, II and III: Against Defendants Waleed, AARAV, Grewal, and Sac Trans, Carmen McFerrin, as Personal Representative of the Estate of Gregory McFerrin, prays for all damages which are allowable under Montana law for survivorship damages and wrongful death damages, the extent of which will be proven at the time of the trial, plus her costs and disbursements incurred herein, and such other relief as the Court deems just under the circumstances.

COUNT IV: Against Defendant AARAV, Grewal, Sac Trans, and Waleed, Carmen McFerrin, individually, prays for judgment for all her damages the extent of which will be proven at the time of trial, plus her costs and disbursements incurred herein, and such other relief as the Court deems just under the circumstances.

DATED this 16th day of June, 2016.

HOYT & BLEWETT PLLC

/s/ Alexander Blewett III
Alexander (Zander) Blewett, III
Anders Blewett
Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs demand trial by jury on all issues.

DATED this 17th day of June, 2016.

HOYT & BLEWETT PLLC

/s/ Alexander Blewett III
Alexander (Zander) Blewett, III
Anders Blewett
Attorneys for Plaintiffs

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that, on this 17th day of June, 2016, a copy of the
3 foregoing document was served on the following persons by the following means:

4 1,2,3,4 CM/ECF
5 Hand Delivery
6 Mail
7 E-Mail

8 1. Clerk, U.S. District Court
9
10 2. P. Brad Condra
11 Milodragovich, Dale & Steinbrenner, PC
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21 4. Nicholas J. Pagnotta
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28

19 _____
20 /s/ Alexander Blewett III
21 Alexander (Zander) Blewett, III
22 Anders Blewett
23 Attorneys for Plaintiffs
24
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26
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